

must be used. The cell carrier 17 used by Minuth is held by a ring 16. In turn ring 16 is fixed between two o-rings 15, 15a.

Only the housing parts 2 and 6 of the assembly of Minuth are comparable with the membrane plate of the present application, since they have passages for supplying liquid, gassing and a sensor connection. However, the assembly of Minuth comprised of two housing parts that have to be locked by a bracket 7 is much more complicated and disadvantageous in use than the membrane plate of present claim 1 of the present application. Moreover, the cell carrier 17 is not held by these housing parts, but is held by the ring assembly 16, 15, 15a. This assembly is also very complicated in configuration.

It is important that the cell carrier 17 in the device of Minuth is not described as a membrane. Instead, Minuth teaches (column 3, lines 43ff) that the disks 13 and/or 13a can be membranes, for example gas-permeable membranes or membranes that make it possible for cells to grow through them. However, if one of the disks is such a membrane only one of the disks can be a glass pane, so that only one glass pane is present. However, in present claim 1 there are two glass panes and one membrane placed between said glass panes.

The reason the carrier 17 is not a membrane is clearly that in Minuth the cells are grown on the inside faces of the two glass plates 13a and 13. The whole idea of the Minuth invention is to minimize the spacing between the objective 14 and the cells

being observed, and this is done by growing the cells on the glass plates 13 and 13a with which the objective 14 can be very closely juxtaposed. Converting the carrier 17 into a membrane would therefore defeat the main goal of Minuth, namely getting the growing cells as close as possible to the outside so they can be observed closely.

Furthermore, no means for illuminating the inside of the cell culture chamber is disclosed by Minuth.

Thus amended claim 1 is clearly novel over Minuth under §102. Since there is no discussion in this reference to replace the carrier 17 with a membrane, only to replace the plates 13 and 13a with membranes, a §103 rejection is also impossible.

Claim 2 describes how the first transparent glass pane is fixed on the membrane plate in the area of the underside of the membrane plate. In the device of Minuth the disk 13 is instead held by a plate 19. Thus claim 2 is also novel over Minuth.

Claim 3 recites the feature that the cover plate forms a cell culture chamber cap with the second transparent glass pane, being fixed in a releasable manner on the upper side of the membrane plate. The term "with" indicates that the cell culture cap and the second transparent glass pane form a unit, as shown in FIG. 3 of the present application. In contrast, disk 13a and

holding seal 19a do not form a unit. Instead these components are not even connected to each other but are separated by the ring 18a. Therefore, also claim 3 is novel over Minuth.

Claim 4 describes how the cell culture chamber cap is formed with an opening for accommodating and fixing the glass pane. In discussing present claim 3, the Examiner equates a cover plate of the present application with the holding seal 19a of the device of Minuth. However, the holding seal 19a does not have an opening for accommodating and fixing the glass pane. In contrast, as already stated above, the glass pane 13a and the holding seal 19a are separated by the ring 18a. Hence claim 4 is novel over Minuth.

Claim 6 also defines an invention in that, as already stated above, the carrier plate 17 of Minuth is not a membrane. Moreover, the sealing rings 15, 15a of the device of Minuth cannot be pressed on the periphery of the cell carrier 17 but on the ring 16, so that claim 6 is novel over Minuth.

With respect to claim 11, it is noted that a biofoil is not to be equated with a biocompatible membrane as described by US 2003/0190744 of McGarry. Moreover, McGarry in no way teaches the cultivating of cells. Therefore, someone skilled in the art would not combine the document of Minuth with the document of McGarry.

The biocompatible membrane as described by McGarry is just a membrane for attaching cells, a biologically inert support that does not cause any reactions of the cells and does not damage the cells, which is why it is considered biocompatible. In contrast, claim 11 specifically recited a biofoil, a much more complex system in comparison with a simple biocompatible membrane. A biofoil has pores of different diameters for controlling selective diffusion of molecules of different sizes.

In sum it is noted that the new main reference, Minuth, shows a system with a "cell carrier 17" that is nowhere described as a membrane. The only location in Minuth referring to a membrane states that, instead of the carrier 17 being a membrane, one of the end plates 13 or 13a can be a membrane. Thus this reference teaches away from the instant invention.

For the reasons advanced above, the claims are all clearly in condition for allowance and passage to issue. Notice to that effect is earnestly solicited.

If only minor problems that could be corrected by means of a telephone conference stand in the way of allowance of this

case, the examiner is invited to call the undersigned to make the necessary corrections.

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Enclosure:

None.